

Public Utility Commission of Texas

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Judy Walsh
Commissioner

December 16, 1996

Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C. 20554

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RE: CC Docket No. 96-45 (DA 96-1891)
In the Matter of
Federal-State Joint Board on
Universal Service

To the Secretary:

Enclosed herewith for filing with the Commission are an original plus four copies of the Further Comments of the Public Utility Commission of Texas in the above captioned matter. We are also providing an electronic copy of the filing as requested, and copies to ITS and individuals indicated on the service list.

Please acknowledge receipt by affixing an appropriate notation on the duplicate copy of this letter furnished herewith for that purpose and returning same to the undersigned in the enclosed, self-addressed envelope.

Sincerely,

Vicki Oswalt
Director, Office of Policy Development

cc: ITS, Inc.

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

**Federal-State Joint Board on
Universal Service**

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CC Docket No. 96-45

**RECEIVED
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**FURTHER COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

**Pat Wood, III, Chairman
Robert W. Gee, Commissioner
Judy Walsh, Commissioner**

December 12, 1996

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of

**Federal-State Joint Board on
Universal Service**

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CC Docket No. 96-45

**FURTHER COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

CONTENTS

Page No.

	Executive Summary	
I.	Introduction.....	1
II.	Goals and Principles of Universal Service Support Mechanisms.....	2
III.	Definition of Universal Service: What Services to Support.....	3
IV.	Affordability	4
V.	Carriers Eligible for Universal Service Support	5
VI.	High-Cost Support	5
VII.	Support for Low-Income Consumers.....	9
VIII.	Support for Schools and Libraries	9
IX.	Support for Health Care Providers.....	10
X.	Interstate Subscriber Line Charges and Carrier Common Line Charges	10
XI.	Basis for Assessing Contributions	11
XII.	Administration of Support Mechanisms	13
XIII.	Conclusions.....	13

Executive Summary

The Public Utility Commission of Texas (Texas PUC) herein provides its Further Comments on the Recommended Decision of the Federal-State Joint Board and the Public Notice of the Federal Communications Commission (FCC) on the revision of federal support mechanisms for universal service.

The Texas PUC, along with most state regulators, are focusing on the need for universal service safeguards in the new era of telecommunications competition. We are generally in agreement with the Joint Board's Recommended Decision, with emphasis and exceptions as noted in these Further Comments. We support the inclusion of the new principle of competitive neutrality, as this principle is essential in the new competitive environment.

We urge the FCC to depart from the Recommended Decision regarding support for designated services, and adopt a plan that supports all single-line residential and business customers in high cost areas. We support the recommendation to convene a Joint Board within the next five years to monitor and evaluate the success and/or concerns of the universal service program.

The Texas PUC supports the Joint Board's recommendation that the states should exercise primary responsibility for determining the affordability of rates, and asks the FCC for clarification of the states' role in this regard. We further support the recommendations concerning state involvement in determining carrier eligibility for the receipt of support.

The Joint Board recommends the use of forward-looking incremental costs as the basis for determining the level of universal service support to be received for providing service to high-cost areas of the nation, and the Texas PUC agrees. However, we have concerns with the calculation of the nationwide threshold based on basic, discretionary, and access charge

revenues. The Joint Board's recommendation for the high-cost support plan includes a specific phase-in plan for rural companies. We urge the FCC to consider an additional option that would allow rural companies to maintain their current level of support until the state designates another carrier to be eligible within the same area.

The Texas PUC generally supports the Joint Board's recommendations on issues involving support programs for low-income customers and for schools and libraries. On the issues of schools, libraries, and health care providers, we urge the FCC to review the programs that have been established in Texas for telecommunications services provided for these entities.

The Joint Board recommends that there be no increase in the Subscriber Line Charge at this time, and the Texas PUC concurs. We look forward to participating in the FCC's access charge proceeding in the near future.

The Joint Board recommends that the funding assessments for the interstate universal service fund be based on the combined interstate and intrastate revenues of telecommunications providers. The Texas PUC is continuing its investigation into universal service issues including consideration of funding mechanisms; therefore, we have not yet formulated our position on this issue. However, the Texas PUC believes that there are certain policy issues that the FCC should consider and that, if the FCC assesses both interstate and intrastate revenues, it is appropriate for the states to adopt a similar funding base. The Joint Board has recommended the establishment of a universal service advisory board to oversee the activities of the fund administrator, and the Texas PUC agrees with this recommendation.

The Texas PUC encourages the FCC to remain sensitive to the unique circumstances facing individual states. Decisions at the federal level should not hinder the ability of the states to develop their own workable and viable state universal service programs.

FURTHER COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS

I. Introduction

1. With the creation of the Federal-State Joint Board in this proceeding, the Federal Communications Commission (FCC or Commission) acted on one of the most wide-reaching aspects of the federal Telecommunications Act of 1996 (FTA96)¹ -- the overhaul of the nation's method of promoting and supporting universal telecommunications service. On November 7, 1996, the Federal-State Joint Board responded to the charge of the FCC and the FTA96 by adopting a Recommended Decision regarding issues related to universal service.² In that decision, the Joint Board made numerous recommendations on universal service issues, including topics relating to: universal service principles; services and carriers eligible for support; support mechanisms for rural, high cost, and insular areas; support for low income consumers; affordability; support for schools, libraries, and health care providers; administration of support mechanisms; and common line cost recovery.

2. Through a Public Notice³ released November 18, 1996, the FCC has requested comments on the Joint Board's Recommended Decision, with specific emphasis on several questions raised by the Joint Board. The Public Utility Commission of Texas (Texas PUC), having been given general regulatory authority over public utilities within our jurisdiction in Texas, hereby submits these Further Comments on universal service issues most directly related to state regulatory policy.

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 *et seq.*).

² *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 96J-3 (November 7, 1996).

³ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice, DA 96-1891, (November 18, 1996).

3. At the outset, the Texas PUC must recognize and commend the members of the Joint Board and their staff, who have done a masterful job of addressing the complex issues contained within the scope of universal telecommunications service within the incredibly tight time requirements imposed in the FTA96. The Texas PUC is generally in agreement with the findings of the Recommended Decision, with emphasis and exceptions as noted in these Further Comments.

II. Goals and Principles of Universal Service Support Mechanisms

4. The Recommended Decision of the Joint Board first addresses the provision of the FTA96's §254(b)(7) allowing the Board and the FCC to determine principles in addition to those listed in §254(b) that are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with other provisions of the FTA96. The Joint Board recommends the addition of a seventh substantive principle -- competitive neutrality -- that would guide the application of universal service support mechanisms and rules.⁴

5. The Public Notice seeks comment on how the additional principle of competitive neutrality should be defined and applied within the context of universal service. The Texas PUC suggests that this principle, like the other guiding principles adopted in the statute, must permeate throughout the FCC's decisions; from issues regarding supported services to carrier eligibility and fund assessments.

⁴ Recommended Decision at 23.

III. Definition of Universal Service: What Services to Support

6. The Joint Board recommended that the support for designated services provided to residential customers be limited to those services on a single connection to a subscriber's principal residence,⁵ and that a reduced amount of support be extended to single-connection businesses in high cost areas.⁶ The Texas PUC encourages the FCC to adopt a plan that provides support to all residential customers in high cost areas. While we agree with the Joint Board that support for a single residential connection is consistent with the goals of universal service, we are concerned that the administrative requirements resulting from the Joint Board's proposal to support only one residential line at the customer's principal residence would be unduly burdensome to telecommunications providers and customers alike. For example, telecommunications providers could be placed in the role of determining which customers are eligible for supported lines and consumers could be required to provide proof that they qualify for the supported lines. Additional concerns exist regarding the determination of the customer's principal residence, especially when the principal residence may be in a different state than the one in which service is being requested. We believe that these types of administrative difficulties outweigh any arguments that the support for a single connection is sufficient for providing complete access to telecommunications and information services and, therefore, universal service. We are also wary of the local rate design pressures that may result from the Joint Board's proposal. As an example, the potential application of different rates to additional lines creates the real possibility of consumer confusion and frustration. We agree that single-line business customers should receive a reduced level of support.

⁵ Recommended Decision at 89.

⁶ Recommended Decision at 91-92.

7. The Joint Board recommends that the FCC convene a Joint Board no later than January 1, 2001 to revisit the definition of universal service.⁷ The Texas PUC supports this recommendation, and we urge the FCC to continue evaluation of reasonable reporting and monitoring methods that will allow all parties to evaluate the success and/or concerns of the universal service program on an ongoing basis.

IV. Affordability

8. Although the Joint Board concluded that a determination of affordability must take into account consideration of both rates and other factors,⁸ the Joint Board has included a finding that local rates are generally affordable,⁹ and has clearly rejected the use of an affordability determination in arriving at a benchmark for use in developing the federal high cost funding program.¹⁰ In addition, the Joint Board recommended that the states should exercise primary responsibility, consistent with FCC guidelines, for determining the affordability of rates.¹¹ While affordability is mentioned further in the Recommended Decision on issues involving low-income support and support for educational and other discount plans, the Recommended Decision's allusions to the "primary responsibility" of the states in the determination of affordability may have little meaning in actual practice. The Texas PUC urges the FCC to clarify the role of the states in this regard, particularly if it is the intent of the FCC to consider permitting regional variations of the nationwide benchmark to address specific

⁷ Recommended Decision at 110.

⁸ The Recommended Decision specifically mentions local calling area size, income levels, cost of living, population density, and other socioeconomic indicators as factors that may affect affordability.

⁹ Recommended Decision at 133, 769.

¹⁰ Recommended Decision at 309 - 317.

¹¹ Recommended Decision at 131.

affordability issues. At a minimum, the FCC should not preclude an individual state's use of affordability factors in establishing its own parallel intrastate universal service support mechanism.

V. Carriers Eligible for Universal Service Support

9. The Joint Board recommends that the FCC adopt, without elaboration, the criteria established by FTA96 for eligibility of carriers to receive universal service support. That is, a recipient must be a common carrier and offer the services supported by the universal service plan, either via its own facilities or in conjunction with the resale of facilities owned by another carrier, and must advertise the availability and charges of its services. The recommendation further concludes that it is unnecessary for the FCC to impose jurisdictionally symmetrical regulatory obligations in addition to those contained in FTA96. The Texas PUC supports the Joint Board's recommendation in this regard, and strongly supports the right of individual states to impose competitively-neutral and technologically-neutral conditions on carriers wishing to become eligible for support from the federal and state universal service funds.

VI. High Cost Support

10. The Joint Board recommends basing universal service support for non-rural, eligible carriers on the forward-looking cost of providing the network used to furnish the services included in the definition of those to be supported under the universal service plan. The Joint Board further recommends the use of a proxy model to develop the level of support, but declines to recommend the use of a particular model, recommending instead that the FCC continue to work with state regulatory commissions to develop an adequate model. The Texas PUC supports

the use of forward-looking, long run incremental costs using least-cost technologies, such as proxy models or the Texas PUC's Substantive Rule §23.91,¹² to determine the cost of providing the supported services. We further agree that additional evaluation and investigation must be completed before settling on the use of a specific methodology. However, we support the targeting of support as narrowly as is practical and believe that any methodology selected should be capable of such targeting. We support the use of census block groups as areas to be used for targeting, as they offer the benefits of being relatively small and independent of the incumbent local exchange carriers' service areas. We intend to be actively involved in workshops and informal work groups on the issues associated with the proxy models.

11. In order to determine the level of support provided to eligible carriers for serving high-cost areas, the Joint Board recommends the use of a nationwide benchmark of average revenues per line to be used with the proxy model. The recommendation further describes the revenues per line as including revenues generated by local, discretionary, access services, and other services, divided by the number of loops served.¹³

12. The Texas PUC is concerned about the Joint Board's recommendation on the inclusion of discretionary and access service revenues in the computation of the nationwide benchmark for the determination of high cost support for at least four reasons. First, our experience thus far with the proxy models leaves us less than confident that the costs of non-basic local and access services are included in the cost models, and we believe the services reflected in the costs must match as closely as possible the services producing the revenues.

¹² *Comments of the Public Utility Commission of Texas*, CC Docket No. 96-45, April 3, 1996, Attachment V.

¹³ Recommended Decision at 310.

Despite industry assurances,¹⁴ there continues to be an apparent mismatch between revenues and proxy costs, which is somewhat troublesome.

13. Second, the inclusion of the discretionary and access service revenues would appear to provide incentives that may perpetuate the implicit subsidy that FTA96 clearly intended to remove. By increasing the benchmark through recognition of these revenues, the amount of support per line is decreased. To maintain its current revenue stream, however, a local exchange carrier will have a strong incentive (absent the presence of an effective competitor or regulatory intervention) to retain rates for discretionary and access services at their current level, well above incremental costs.

14. The third concern over the use of discretionary and access service revenues and costs in the establishment of the amount of support is the appearance -- correct or not -- that these services would have become new services to be supported by the high-cost funding program. This is clearly not the intent of the Joint Board and should not be the intent of the FCC, and such an appearance should be avoided.

15. The fourth and final point to be made with regard to the inclusion of these service revenues in the calculation of the benchmark is that the FCC is planning an extensive review of access charges in conjunction with its review of universal service, and it is not clear to the Texas PUC what will happen if access rates are significantly changed through that process. If the FCC reduces access charges, will the nationwide benchmark be based on current revenue streams or projected revenues? The answer to this question will likely have a significant impact on the size of the overall fund as well as payments to individual carriers.

¹⁴ Recommended Decision, footnote 1003.

16. The Texas PUC supports the use of a nationwide benchmark for the purpose of administering the interstate universal service fund, but urges the FCC to consider the above-mentioned concerns about the manner of the benchmark calculation. The FCC may wish to consider establishing a creative subtrahend benchmark that reflects a reasonable threshold for the purpose of computation, but that is less closely tied to the mathematical average revenue per line for services that may or may not be clearly included in the proxy model, or for services that may or may not be appropriate to include in the calculation of the support.

17. The Joint Board recommends the use of two separate benchmarks; one for residential service and a second for single line business service. The Texas PUC agrees with the development of these separate benchmarks, with the caveats expressed above for benchmarks in general.

18. The Joint Board recommends that the new universal service support mechanism for rural, insular, and high-cost areas take effect on January 1, 1998, with an extended phase-in period for rural telephone companies. The Texas PUC agrees that rural telephone companies should be allowed the option of an extended phase-in period (unless they wish to participate in a proxy-based program more quickly). However, as an alternative to the six-year phase-in plan recommended by the Joint Board, we suggest that the FCC consider an additional option. Instead of mandating the three-year phase-in following the three-year "status quo" period, the FCC might consider allowing rural companies to maintain their current level of support until the state designates another carrier to be eligible within the same serving area under 47 U.S.C. §214(e). While the Texas PUC views the latter option as viable, we are hesitant to fully support the option since we have not formally decided this issue on an intrastate basis.

VII. Support for Low-Income Consumers

19. The Joint Board recommends that the support mechanisms contained in the FCC's universal service program allow low-income consumers to have access to the same services designated for support to rural, insular, and high-cost areas. A secondary effect of this recommendation is that the low-income support program will no longer be funded only by interexchange carriers. The Texas PUC generally supports the revisions recommended by the Joint Board on low-income issues.

20. The Recommended Decision would revise the Lifeline Assistance program for eligible low-income consumers to include voluntary toll limitation and to prohibit carriers from disconnecting Lifeline service for the non-payment of toll charges. The Texas PUC is considering these issues, among others, in a pending project.¹⁵

VIII. Support for Schools and Libraries

21. The Joint Board has made a number of recommendations with respect to support for services used by schools and libraries. We urge the FCC to review the Texas PUC's earlier Comments¹⁶ in this proceeding, which refer to the Texas Legislature's statutory direction as it relates to Texas' efforts to support services used by educational institutions and libraries. The state statute requires the provision of advanced services (e.g., 45 Mbps broadband) upon request, with discounted rates for these customers set near incremental costs. Based on recent monitoring

¹⁵ *Petition of the Office of Public Utility Counsel, the Center for Economic Justice, and the Consumers Union Southwest Regional Office to Adopt Rules Which Prohibit Telephone Utilities from Disconnecting or Refusing to Connect Basic Local Telephone Service for Nonpayment of Other Services, Including Long Distance, and Other Reforms*, Project No. 16606.

¹⁶ Comments of the Texas PUC, April 3, 1996.

reports, well over one hundred school districts and universities in Texas are receiving such connections at discounted rates after one year of operation under the 1995 state statute.

IX. Support for Health Care Providers

22. Section 254(h) requires consideration of certain health care providers within the structure of the interstate universal service fund. The Joint Board has recommended, for a number of reasons, that the FCC seek additional information on the telecommunications needs of rural health care providers and on the most cost effective ways to provide these services to rural America. As is the case with most state utility regulators, the Texas PUC's jurisdictional authority is primarily limited to the services provided by utilities, and not to the applications for which the services are used. However, as described in our earlier Comments in this proceeding, the Texas Legislature has established a regime of specialized treatment for nonprofit telemedicine centers of academic health centers, public or not-for-profit hospitals, or state-licensed health care practitioners.¹⁷ This regime consists of the provision of advanced services at discounted rates in a manner similar to that described above for educational institutions. Based on monitoring reports, dozens of hospitals and health care providers in Texas are receiving such connections at discounted rates after one year of operation under the 1995 state statute.

X. Interstate Subscriber Line Charges and Carrier Common Line Charges

23. The Joint Board recommends that there be no increase in the current \$3.50 subscriber line charge (SLC) cap for primary residential and single-line business lines. The Joint Board further recommends that the SLC cap be adjusted downward in the event that the FCC

¹⁷ Comments of the Texas PUC, April 3, 1996, Attachment I; see also PURA95 §3.359.

decides to use combined inter- and intrastate revenues as the basis for assessing carrier contributions to the new USF program. The Texas PUC supports the retention of -- or decrease in -- the current \$3.50 cap on the SLC, pending further review in the FCC's anticipated access charge proceeding.

XI. Basis for Assessing Contributions

24. The Joint Board recommends that contributions to the new universal service fund be based on a carrier's gross telecommunications revenues net of payments to other carriers. The Texas PUC agrees with this recommendation, as it is a fair allocation of responsibility and avoids the concern of double payments.

25. The Joint Board recommends that universal service support mechanisms for schools and libraries and rural health care providers be funded by assessing both the intrastate and interstate revenues of providers of interstate telecommunications services. The Joint Board makes no recommendation of the revenue base to be used for the modified high cost and low-income support portions of the universal service program, but urges the FCC to seek further comment, particularly from the states, on the appropriate funding mechanism to be used.

26. The Texas PUC is continuing its investigation into universal service issues including consideration of funding mechanisms; therefore, we have not yet formulated our position on this issue. However, the Texas PUC believes that there are certain policy issues that the FCC should consider and that, if the FCC assesses both interstate and intrastate revenues, it is appropriate for the states to adopt a similar funding base.

27. In considering whether to assess both interstate and intrastate revenues, the Texas PUC believes that the FCC should consider certain policy issues. For example, if the FCC assesses both interstate and intrastate revenues and the state assesses both, the incentives for carriers to arbitrage revenues between the jurisdictions may be reduced. The existence of a significant disparity between assessments on interstate and intrastate revenues may create pressure for a customer to mis-report jurisdictional usage. In addition, we believe that the FCC must consider whether the assessment is competitively neutral.

28. The Texas PUC is convinced that the states have the ability to assess the interstate revenues of providers of intrastate telecommunications services to fund state universal service programs. Pursuant to the Texas Public Utility Regulatory Act of 1995 (PURA95), the Texas PUC may exercise its regulatory authority and assess both interstate and intrastate revenues of providers of intrastate telecommunications services as a means of funding Texas' Universal Service Fund (USF).

29. Section 3.608 of PURA95 grants the Texas PUC broad authority to determine the appropriate basis for funding the state's USF. Consistent with its statutory directive to adopt rules for the implementation and administration of a state USF and to approve procedures for collection of universal service fund revenues, the Texas PUC has initiated Project No. 14929, Investigation of Universal Service Issues. As the Texas PUC examines the funding issues surrounding universal service support, we may determine that the state USF should be funded by assessments on intrastate and interstate revenues of intrastate telecommunications carriers.¹⁸ The

¹⁸ Section 254(f) of the FTA96 expressly recognizes the States' authority to adopt regulations to preserve and advance universal service. Consistent with that section, funding for the Texas Universal Service Fund, whether by intrastate and/or interstate revenues, would come from every telecommunications carrier that provides intrastate telecommunications services, and not from carriers that solely provide interstate services.

Texas PUC may establish a universal service funding mechanism which would limit the assessment of interstate revenues to calls originating or terminating within Texas and charged to a service address or are billed or paid within Texas. Alternatively, the Texas PUC may consider a more general apportionment formula based on measures of a telecommunications carrier's income or gross receipts.

XII. Administration

30. The Joint Board recommends that the FCC appoint a universal service advisory board to designate a neutral, third party to administer the revised universal service support program. The selection of the fund administrator would be based on a competitive bidding process no later than six months after the advisory board is created. The Texas PUC agrees with the Joint Board's recommendation in this regard, particularly the use of an advisory board -- including both state and federal regulatory representatives -- to oversee the activities of the administrator.

XIII. Conclusions

31. The Federal-State Joint Board convened in this proceeding has done a tremendous job of examining the incredibly complex issues surrounding universal telecommunications service, and has offered significant recommendations to the FCC within the stringent schedule mandated by Congress. The Texas PUC is committed to working with the FCC to create solutions and implement programs that will achieve the universal service principles set forth in the FTA96. Through our comments, we have attempted to outline the Texas PUC's position on

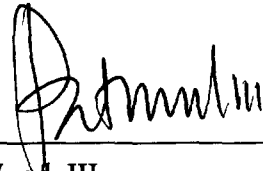
various aspects of the Joint Board recommendation. As the FCC and states work toward achieving the goals of universal service, we encourage the FCC to remain sensitive to the unique circumstances facing individual states. Texas, in particular, has many geographic and demographic properties that cause our telecommunications carriers to be faced with complex universal service challenges. The challenges facing Texas illustrate the need for states to have the freedom to craft a system of universal service support mechanisms in a manner that is responsive to the needs of their citizens. Subsection 254(f) of the FTA96 makes clear that a State is free to adopt its own universal service regulations so long as they are not inconsistent with FCC rules. Subsection 254(f) ensures that the states retain control to formulate their own position on universal service issues and we strongly believe any decisions at the federal level should not hinder the ability of the states to develop their own workable and viable state programs.

32. We appreciate the opportunity to provide further comments in this proceeding, and look forward to continuing our involvement in the universal service process in the months and years ahead.

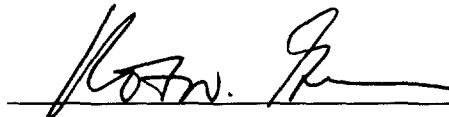
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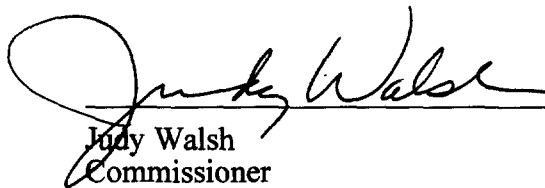
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